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Before the
Federal Communications Commission
Washington, D.C. 20554

Billed Party Preference)
For InterLATA 0+ Calls)
)
Petition of the National)
Association of Attorneys General)
Telecommunications Subcommittee)
for Rules to Require Additional)
Disclosures by Operator Service)
Providers of Public Phones)
)

CC Docket No. 92-77

RM-8606

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To: The Commission

**REPLY COMMENTS OF APCC TO
INDUSTRY COALITION PROPOSAL FOR RATE CEILINGS
AND THE NAAG PETITION FOR RULEMAKING**

The American Public Communications Council ("APCC") endorses the Industry Coalition Reply comments filed by APCC and six other signatories to the Industry Coalition's proposed benchmark rate plan. In these separate reply comments, APCC discusses additional points in response to the comments of some parties on the Coalition Plan. APCC also discusses how its proposed consumer message component to the Coalition benchmark (see APCC Comments at 15-20) addresses concerns raised in the comments of other parties on the Coalition plan and on the petition filed by the Telecommunication Subcommittee of the National Association of Attorneys General.

As explained more fully in APCC's comments, the Industry Coalition rate ceilings plan should be improved by adding a requirement that any OSP which charges above-benchmark rates must

provide an oral message before charges are incurred. APCC Comments at 15-18. The proposed consumer message provision would provide:

The rates charged by this provider exceed benchmarks established by the government. Check the information posted on or near the telephone for the toll-free number to obtain rate information before placing your call.

APCC's proposed consumer message provision would fairly and effectively provide consumers with adequate warning with respect to potentially excessive rates. APCC believes that this additional element effectively addresses any legitimate criticism of the Coalition's plan. Further, the legitimate criticisms directed at the NAAG proposed disclosure message do not apply to APCC's proposed consumer message requirement.

I. APCC's PROPOSED CONSUMER MESSAGE
REQUIREMENT EFFECTIVELY ADDRESSES ANY
LEGITIMATE CRITICISM OF THE COALITION PLAN

A. APCC's Message Requirement Resolves
the "Porousness" Concern

APCC's proposed consumer message provision would serve two purposes. First, to the extent that OSPs that currently charge above-benchmark rates fail to reduce those rates below the benchmarks, the consumer message would provide immediate protection for consumers pending a final determination by the Commission as to whether the above-benchmark rate is just and reasonable. Second, the message would inform consumers that they may incur charges substantially higher than expected, separate and apart from whether the rate is found to be just and reasonable.

This message requirement would directly address the claims of some commenters that the Coalition benchmark rate ceilings are too "porous" or "invisible" to be effective. MCI at 4; Sprint at 7-8. If any OSPs still charged above-benchmark rates, this provision would provide sufficient warning to consumers that they may incur substantially higher than expected charges. The proposed benchmark rates are at levels that would address consumer expectations with respect to OSP rates, as evidenced by APCC's analysis of complaints filed at the FCC. See APCC at 10-11.

B. More Pervasive Regulation Such As BPP Is Not Necessary

Several of the commenters also contended that both the benchmark plan and the NAAG message plan were deficient because they did not address the "root cause" problems in the O + industry. MCI at 5; Sprint at 11; SWB at 9; MessagePhone at 5. Under this view, the only competition in this market is for locations and commission payments, to the consumer's severe detriment, and neither the benchmark plan or the NAAG message plan can be effective because they do not alter the basic "incentive" structure. This argument disregards the record in this proceeding. If commissions are the only competitive incentives, why are not all OSPs charging \$20.00 per minute for operator assisted calls? Presumably, the location owner and the OSP would be interested in making as much money as possible off of unwitting and duped consumers. In reality, there are potent competitive forces, such as conventional access codes, debit cards, 800 services, cellular

telephones and pagers which pressure OSPs to maintain reasonable rates for operator service calls. See, e.g., Comments filed in CC Docket No. 92-77 on August 1, 1994 by the following parties: APCC at 22-23; Bell Atlantic at 10; NYNEX at 4, 7-8; Polar Communications; SNET at 4; Teleport Communications Group at 3-6; Teltrust at 11; U.S. Osiris. See also Reply Comments filed in CC Docket No. 92-77 on September 14, 1994 by APCC at 14.

The operator services market does not need to be completely overhauled. Rather, a discrete group of OSPs are charging excessive rates, on a fraction of the total number of operator assisted calls. The Commission should simply target those companies for appropriate action. The proposed Industry Coalition benchmark rate ceiling plan addresses this problem because it identifies OSPs who continue to charge above-benchmark rates and encourages OSPs to file with-in benchmark rates. APCC believes that the consumer message component would effectively address any legitimate criticism of the Industry Coalition plan by alerting consumers to those OSPs who continue to charge above-benchmark rates.

II. APCC'S PROPOSED CONSUMER MESSAGE COMPONENT
IS A MUCH BETTER SOLUTION THAN THE FLAWED
NAAG PROPOSAL

Although NAAG has also proposed a consumer disclosure requirement, the respective notice proposals are quite different. As more fully set forth in APCC's comments, the NAAG proposal is flawed because: (1) it is triggered at unreasonably low dominant carrier rates; (2) the message is discriminatory, anti-competitive,

and confusing; and (3) it is a stand-alone provision which does not enhance the FCC's ability to target OSPs who charge excessive rates. APCC at 12-15. With respect to the last point, APCC views its own proposed message requirement as merely one additional component, a consumer protection component, of the larger benchmark rate ceiling plan proposed by the Coalition.

A. APCC's Proposed Message Requirement Addresses Compliance Concerns

Several commenters argued that a lack of OSP compliance with a message requirement would render such a requirement ineffective. MCI at 6; Sprint at 3-4; SWB at 4; MessagePhone at 3. The remedy for non-compliance is strict enforcement of the law.

Assuming non-compliance is a legitimate concern with respect to NAAG's proposed message requirement, which would apply broadly to any OSP charging any rate higher than a dominant carrier's, it is not a problem for APCC's much more narrowly tailored proposed message: Since only OSPs charging rates above the Coalition's benchmarks must give the message, the FCC can focus solely on those OSPs (who will be reported by LECs). Because the affected calls will relate to a small segment of the market, verifying for compliance would be a manageable task. If an OSP is not in compliance, that OSP should be penalized with appropriate sanctions.

B. The Coalition's Benchmark Rates are The Proper Level to Trigger Consumer Notice Message

Several commenters criticized the NAAG message proposal because it would be unfair to use dominant carrier rates as the trigger to require a consumer message provision. OSC at 8; Comptel at 10-11; Ameritech at 3. Using dominant carrier rates as a trigger for a consumer message unreasonably assumes that one carrier's rates should set the standard for all, and would incorrectly imply to consumers that rates charged by non-dominant carriers, if at all higher than the dominant carrier rate for any particular category of call, are inherently suspect. See APCC at 13. As the dominant carrier itself states, "there could be no legitimate interest in having all other firms set their prices at the dominant carrier's rates." AT&T at 5.

By contrast, the Industry Coalition's proposed benchmark rates provide the proper rate level to trigger a consumer message provision. Those are the levels that have demonstrably provoked numerous consumer complaints, as evidenced by APCC's analysis. See APCC at 10-11. Setting the trigger at this level balances the competing interests of carriers and consumers. It would not be unduly burdensome or unfair to require OSPs to carry a consumer message for rates that exceed reasonable government benchmarks based on levels proven to cause massive consumer complaints.

By using dominant carrier rates as the trigger for the consumer notice provision, NAAG has constructed a regime that will

unnecessarily alarm consumers or cause them to ignore the warning message. Such a message will clearly imply to the caller that an OSP is charging rates that are potentially unlawful or that substantially exceed consumer expectations, when in fact the rates may differ only slightly, if at all, from what consumers expect to pay. In all likelihood, upon hearing this message, the caller will walk away from the phone or dial-around.

Their rates may be well within consumer expectations, but the message would imply that the OSP is price gouging. Since dominant carrier rates are inappropriate sources of guidance as to the "maximum" just and reasonable rates, this is an unfair and arbitrary standard.

For those consumers who do not walk away, a message based on dominant carrier rates is also likely to be ineffective. If consumers simply tune out the message because they hear it so often, it will have no effect. Consumers would not be able to distinguish when they were about to incur a truly excessive charge, and in the end, could incur exorbitant rates because they began ignoring the message. In light of both of these considerations, it would be less discriminatory toward non-dominant OSPs and more effective in protecting consumers, for the Commission to set the trigger level for the consumer message at the benchmarks identified by the Coalition.

Several commenters argued that the Coalition's proposed benchmark rate ceilings make the NAAG message unnecessary. Intellicall at 7; Teltrust at 4, 9. This would certainly be true

for within-benchmark rate calls because those rates would not be presumptively unreasonable or substantially in excess of consumers' expectations. To require a message to be given by OSPs under these circumstance would unnecessarily alarm or irritate consumers and would unfairly burden the OSPs involved. However, for those few carriers who do continue to charge above the Coalition's benchmark rate levels, it would be entirely reasonable to impose such burdens on OSPs in order to warn consumers that they are about to incur substantially higher than expected charges. In such circumstances, the message's costs or burden rightly should be borne by the OSP.

C. APCC Proposed Consumer Notice Provision
is Clear and Non-discriminatory

Another complaint leveled at NAAG's proposed message is that the message's content is discriminatory and confusing. SWB at 4; NYNEX at 3. APCC also made these points in its comments. APCC at 14. In contrast, such criticism does not apply to the APCC proposed message because it is clear and alerts consumers to the fact that the rates charged at this telephone for an operator assisted call exceed rates considered reasonable by the government. It does not refer to a "regular" telephone company or imply that rates above dominant carrier rates are excessive. Thus, the criticisms leveled against the content of the NAAG message do not apply to APCC's message.

D. Other Issues

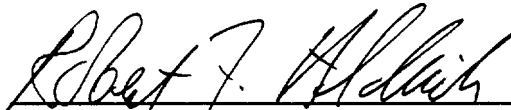
Bell Atlantic questions whether a notice provision would be required if only some of the OSP's rates are above the benchmark and the rest are lower. Bell Atlantic at 2. APCC believes that an OSP with any rate above the applicable Coalition benchmark should be required to provide the consumer message on all calls. The consumer may, in fact, intend to make a call that triggers the above-benchmark rate. Moreover, such a requirement would create the necessary incentives for the OSP to bring all of its rates into line with the benchmark rates.

If an OSP is only charging above-benchmark rates at certain locations, however, the OSP should only be required to provide the consumer message at those locations. The consumer message is intended to protect consumers from exorbitant charges, and if there is no chance that they would incur such charges from a particular phone, it would not be necessary to provide such a warning.

CONCLUSION

For the foregoing reasons, the Commission should adopt the Coalition's proposed benchmark plan and should, once and for all, reject BPP. In implementing the plan, the Commission should amend its rules to provide that carriers filing rates that exceed the benchmarks identified in the Coalition's proposal are subject to a longer notice period and are required to file cost support with their tariff filings. Carriers that have new or existing rates that exceed any of the Coalition's benchmarks should be required to provide APCC's proposed consumer message.

Respectfully submitted,



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